HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.1723 of 2007

DATE: 12.3.2007

Between:
The Agricultural Market Committee rep. By its
Deputy director, O.D. Spl. Grade Secretary,
Tadepalligudem, West Godavari district.

…Petitioners

And

The Divisional Electrical Engiener, (Operation),
Eastern Power Distribution Co. of A.P.Ltd.,
Tadepalligudem, West Godavari District and others.

… Respondents

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ORDER:

The petitioner is an Agricultural Market Committee at Tadepalligudem. The premises maintained by it are provided with power supply through S.C. No. 93. The premises were inspected on 27.11.2003. On finding that the meter was not functioning well, the 3rd respondent initiated proceedings for levying back billing charges from 27.5.2003 to 27.11.2003. A show cause notice was issued. After considering the explanation of the petitioner, the 1st respondent passed an order dated 26.10.2004, holding the petitioner liable to pay a sum of Rs. 1,73,596/-.

The petitioner preferred an appeal before the 2nd respondent against the order of the 1st respondent. The appeal was disposed of by order dated 13.10.2006. The 2nd respondent enhanced the amount of back billing to Rs. 3,48,440/-. Hence, this writ petition.

Petitioner states that there was absolutely no basis for back billing. It is urged that when the petitioner made out a grievance against the order passed by the 1st respondent, the appellate authority crossed all limits of adjudication and enhanced the amount, as though the distribution company preferred the appeal.

On behalf of the respondents, the 2nd respondent filed a counter affidavit attempting to justify his action. He has narrated the various facts on the basis of which he came to the conclusion that the back billing amount must be more than what was levied by the 1st respondent.

Heard the learned counsel for the petitioner and the learned

Standing Counsel for the respondent.

The Electricity Act, 2003 and the Terms and Conditions of Supply, prescribe the procedure for levy of back billing charges. On finding that the meter fitted to S.C. No.93 was not functioning well, proceedings were initiated for back billing. The petitioner submitted its explanation and taking the same into account, the 1st respondent passed an order. The petitioner availed the remedy of appeal provided in accordance with law.

The very purpose of providing the remedy of appeal is to enable the appellate authority to examine the matter and see whether the order passed by the primary authority suffers from any infirmity. In case, he notices that any irregularity has taken place or any infirmity exists, the corresponding relief needs to be granted to the appellant. Where, however, the appellate authority does not find any basis to interfere with the order of the primary authority, the appeal has to be dismissed and the matter to be left at that. Unless, the relevant provision empowers him to enhance the liability for instance, in certain service regulations, the appellate authority is conferred with the power to enhance the punishment, while dealing with an appeal of an employee. In such cases the appellate authority is required to put the effected party on notice. The notice must indicate the reasons and the proposed action. Admittedly, such a power is not vested in the 2nd respondent.

It is rather shocking and surprising that the 2nd respondent has chosen to almost double the amount levied by the 1st respondent while disposing of the appeal. It clearly demonstrates that he does not have the basic understanding of the appellate powers. It is unfortunate that a person who lacks such basic understanding was placed in such an important position. Further, having passed an order in the appeal, as an appellate authority, the 2nd respondent has chosen to file

counter affidavit, to sustain his order. This is not proper. When this court indicated its displeasure about the manner in which, the 2nd respondent exercised powers, learned Standing Counsel, requested for time to enable the 2nd respondent to express his regrets by filing an affidavit. Today, an affidavit is filed, which does not show any remorse on the part of the 2nd respondent. That, however, is a different aspect.

Hence, the writ petition is allowed and the order under appeal is set aside. The matter is remanded to the appellate authority for fresh consideration and disposal. It is directed that if the same officer, who passed the impugned order is holding the office of the 2nd respondent, the matter shall be entrusted to any other authority of equivalent jurisdiction.

The writ petition is accordingly allowed. There shall be no order as to costs.

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L. NARASIMHA REDDY,J

Date: 12th March, 2007

Note: **L.R. Copy to be marked**

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